

The Department of Community Planning & Development
City Hall, Lynchburg, VA 24504 434-455-3900

To: Planning Commission

From: Planning Division

Date: August 10, 2005

Re: **ZONING ORDINANCE AMENDMENT(S)** – Section 35.1-11.2, Terms beginning with “A”, Section 35.1-13, Variances, Section 35.1-27, Nonconforming Uses, Sections 35.1-11.8(d) & 35.1-56.1(a), Group Homes
SUBDIVISION ORDINANCE AMENDMENT – Section 24.1-45, Exceptions
CITY CODE AMENDMENT – Sections 21-61 & 21-68, Inoperative Motor Vehicles

I. PETITIONER

City of Lynchburg, Planning Division

Representative: Mr. Tom Martin, AICP, City Planner, Planning Division, 900 Church Street, Lynchburg, VA 24504

II. LOCATION

The proposed Ordinance Amendments would be Citywide.

Property Owner: Not Applicable

III. PURPOSE

The purpose of the proposed amendments is to bring the Zoning Ordinance, Subdivision Ordinance & City Code into compliance with or grant authority as allowed by the Code of Virginia.

IV. SUMMARY

- The *Comprehensive Plan* recommends amending existing development regulations to ensure clarity, ease of interpretation and administration, and effectiveness in promoting high quality development. ***Citywide Land Use & Development, Goal 1, Objective 1.A, pg 5.12***
 - The Zoning Ordinance, Subdivision Ordinance & City Code amendments are either required by or authority is given by revisions to the Code of Virginia.
 - **The Planning Division recommends denial of amending Section 35.1-13, Variances of the Zoning Ordinance.**
 - **The Planning Division recommends approval of all other Zoning Ordinance, Subdivision Ordinance & City Code amendments.**
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V. FINDINGS OF FACT

Comprehensive Plan. The Lynchburg *Comprehensive Plan* recommends amending existing development regulations to ensure clarity, ease of interpretation and administration, and effectiveness in promoting high quality development. ***Citywide Land Use & Development, Goal 1, Objective 1.A, pg 5.12.*** It is imperative that the City keep its Zoning Ordinance up to date with amendments required by the Code of Virginia. Failure to do so would result in an Ordinance that was confusing and ineffective.

1. **Zoning.** The City's Zoning Ordinance was adopted on December 12, 1978. Periodically changes are necessary in order to keep the Ordinance current with requirements of the Code of Virginia.

2. **Proffers.** *Not Applicable*
3. **Board of Zoning Appeals (BZA).** *Not Applicable*
4. **Surrounding Area.** The required and proposed changes have the potential to effect land use development throughout the entire City.
5. **Site Description.** *Not Applicable*
6. **Proposed Use of Property.** *Not Applicable*
Traffic and Parking. *Not Applicable*
7. **Storm Water Management.** *Not Applicable*
8. **Impact.** The proposed Zoning Ordinance, Subdivision Ordinance & City Code Revisions are as follows:

1. *Consideration of amending Section 35.1-11.2 of the Zoning Ordinance to include the definition of “automobile graveyard” are required by Section 33.1-384 of the Code of Virginia.*

Section 33.1-384 of the Code of Virginia defines an automobile graveyard as “any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind that are incapable of being operated and which it would not be economically practical to make operative, are placed, located or found. The movement or rearrangement of vehicles within an existing lot or facility does not render this definition inapplicable. The provisions established by this subdivision shall begin with the first day that the vehicle is placed on the subject property.”

Since junkyards and automobile wrecking yards are explicitly prohibited by the Zoning Ordinance including the definition of an “automobile graveyard” will further the prohibition of these types of establishments within the City limits.

2. *Consideration of amending Section 35.1-13 of the Zoning Ordinance to allow the Zoning Administrator the authority to grant variances provided that the administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification. Prior to the granting of a modification, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice as allowed by Section 15.2-2286 of the Code of Virginia.*

Section 15.2-2286 of the Code of Virginia states: “Where provided by ordinance, the zoning administrator may be authorized to grant a modification from any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification. Prior to the granting of a modification, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an

opportunity to respond to the request within 21 days of the date of the notice. The zoning administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The decision of the zoning administrator shall constitute a decision within the purview of § 15.2-2311, and may be appealed to the board of zoning appeals as provided by that section. Decisions of the board of zoning appeals may be appealed to the circuit court as provided by § 15.2-2314.”

The Code of Virginia does not require that this language be placed in local Zoning Ordinances but does provide for it if chosen by the locality. It is the opinion of the Planning Division that this language *should not* be adopted as part of the Zoning Ordinance. To do so would essentially grant variances by the failure of adjacent property owners to respond and would remove too much authority from the Board of Zoning Appeals to determine the merits of each variance request.

3. *Consideration of amending Section 35.1-27 of the Zoning Ordinance concerning the repair of nonconforming billboards as is consistent with Section 33.1-370.2 of the Code of Virginia.*

Section 33.1-370.2 of the Code of Virginia states: “Notwithstanding any other provision of law, maintenance of and repairs to nonconforming billboard signs shall be governed by this section and any applicable regulations promulgated by the Commonwealth Transportation Commissioner, known as the "Control and Continuance of Nonconforming Signs, Advertisements and Advertising Structure." Nonconforming billboard signs shall be maintained in a good state of repair and shall be subject to removal for failure to do so, in accordance with § 33.1-375. In order to make repairs to a nonconforming billboard sign, the owner shall make a written request to the Commissioner and submit the documentation required by 24 VAC 30-120-170. The Commissioner shall review the written request and if the Commissioner determines that the cost of requested repairs does not exceed a dollar amount greater than 50 percent of the current replacement cost of the entire billboard sign or structure, the Commissioner shall provide the owner of the billboard sign with a letter approving the billboard sign repairs. However, in no case shall a nonconforming billboard sign be replaced or rebuilt if the cost of the replacement or rebuilding exceeds 50 percent of the current replacement cost. The owner of the billboard sign shall apply for a building permit from the locality in which the billboard sign is located and provide a copy of the approval letter from the Commissioner as part of the application for the building permit. The Commissioner's determination as to whether the owner of the billboard sign has complied with this section shall be binding upon the locality, unless the building official, for good cause shown, submits to the Commissioner documentation objecting to the Commissioner's determination, within 30 days of the building permit application, with a copy of such documentation being provided to the billboard sign owner. The Commissioner shall consider any documentation submitted by the building official and shall reissue a determination in accordance with this section, which determination shall be binding upon the locality.

This code section gives all authority to determine the condition of a nonconforming billboard to the Virginia Department of Transportation (VDOT). While an appeal process is provided for, VDOT still has the final say on whether nonconforming billboards are allowed to be repaired. It is the opinion of the Planning Division that this has removed a large portion of the local government's ability to regulate nonconforming billboards, and the appeal process is lacking adequate channels. The City of Lynchburg should pursue

possibilities of having this section of State Law revised. However, at this point in time, the City has no option but to include the provisions in its Zoning Ordinance.

4. *Consideration of amending Sections 35.1-11.8(d) and 35.1-56.1(a) of the Zoning Ordinance to amend the definition of a group home as related to homes for the aged, infirm or disabled as is required by Section 15.2-2291(c) of the Code of Virginia.*

Section 15.2-2291(c) of the Code of Virginia states “Zoning ordinances in any city with a population between 60,000 and 70,000 for all purposes shall consider a residential facility in which no more than four aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.”

This section will allow group homes for the elderly, infirm and disabled with no more than four occupants as a use allowed by right in all residential Zoning Districts and is required by the Code of Virginia.

5. *Consideration of amending Section 24.1-45 of the Subdivision Ordinance to allow the Agent of the Subdivision Ordinance to approve the vacation of interior subdivision lot lines by a deed as allowed by Section 15.2-2275 of the Code of Virginia.*

Section 15.2-2275 of the Code of Virginia states: “Alternatively, a locality may allow the vacating of lot lines by recordation of a deed providing that no easements or utility rights-of-way located along any lot lines to be vacated shall be extinguished or altered without the express consent of all persons holding any interest therein. The deed shall be approved in writing, on its face, by the local governing body or its designee. The deed shall reference the recorded plat by which the lot line was originally created.”

Currently the City of Lynchburg requires the submission of a subdivision plat to vacate interior lot lines. These plats are reviewed administratively by the Technical Review Committee (TRC). Adoption of the proposed language would ultimately reduce costs associated with vacating interior lot lines for land owners. The Planning Division has no concerns with the proposed revision.

6. *Consideration of amending Sections 21-61 and 21-68 of the City Code dealing with inoperable motor vehicles as is consistent with Section 15.2-905 of the Code of Virginia.*

The proposed City Code revision would further define how inoperable motor vehicles must be screened from view and would allow for one (1) additional inoperable motor vehicle on the property if it is screened from view and is actively being used in the restoration of another vehicle.

Since this Code Section is not contained within the Zoning or Subdivision Ordinances, the Planning Commission is not obligated to act upon it. However, further regulating inoperable motor vehicles will further the Goals, Objectives & Strategies of the *Comprehensive Plan 2002-2020. Chapter 10, Neighborhoods & Housing.*

9. **Technical Review Committee.** *Not Applicable*

VI. PLANNING DIVISION RECOMMENDED MOTION (s):

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council the following:

- 1. Approval of amending Section 35.1-11.2 of the Zoning Ordinance to include the definition of “automobile graveyard” as required by Section 33.1-384 of the Code of Virginia.**
- 2. Denial of amending Section 35.1-13 of the Zoning Ordinance to allow the Zoning Administrator the authority to grant variances provided that the administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification. Prior to the granting of a modification, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice as allowed by Section 15.2-2286 of the Code of Virginia.**
- 3. Approval of amending Section 35.1-27 of the Zoning Ordinance concerning the repair of nonconforming billboards as is consistent with Section 33.1-370.2 of the Code of Virginia.**
- 4. Approval of amending Sections 35.1-11.8(d) and 35.1-56.1(a) of the Zoning Ordinance to amend the definition of a group home as related to homes for the aged, infirm or disabled as is required by Section 15.2-2291(c) of the Code of Virginia.**
- 5. Approval of amending Section 24.1-45 of the Subdivision Ordinance to allow the Agent of the Subdivision Ordinance to approve the vacation of interior subdivision lot lines by a deed as allowed by Section 15.2-2275 of the Code of Virginia.**
- 6. Approval of amending Sections 21-61 and 21-68 of the City Code dealing with inoperable motor vehicles as is consistent with Section 15.2-905 of the Code of Virginia.**

This matter is respectfully offered for your consideration.

William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Mr. Walter C. Erwin, City Attorney
Ms. Rachel O. Flynn, Director of Community Planning & Development
Mr. R. Douglas Dejarnette, Fire Marshal
Mr. J. Lee Newland, Director of Engineering
Mr. Gerry L. Harter, Traffic Engineer
Mr. Robert Drane, Building Commissioner
Mr. Keith A. Wright, Zoning Official
Mr. Robert S. Fowler, Zoning Official
Mr. Kent L. White, Senior Planner
Ms. Erin M. Bryant, Environmental Planner

VII. ATTACHMENTS

- 1. Zoning Ordinance Revisions**
(see attached Ordinances)
- 2. Subdivision Ordinance Revision**
(see attached Ordinance)
- 3. City Code Revision**
(see attached Ordinance)
- 4. Code of Virginia**
(see attached Code Sections)